Supreme Court, U.S.
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(4)

Case No. 1 Docket No.

Case No. 2 Docket No.

In the United States Supreme Court

Ashok Kashelkar Case No. 1
Petitioner

-against-

Harold Y. MacCartney, Jr et al
Respondents

ASHOK KASHELKAR Case No. 2
Petitioner

-against-

RUBIN & ROTHMAN ; et al
Respondents

On Petition For Writ of Certiorari
to the United States Court for the Second Circuit

Appendix C - Conforming to Rule 14.1(i)(vi)

Petitioner - Ashok Kashelkar - Pro Se
6 Innington Court,
Spring Valley, NY 10977
Tel. (845) 426 2902

89 pp

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List of the Counsels for the Respondents

Case No. 1... Ashok Kashelkar v
Harold Y. MacCartney, Jr, et al

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Case No. 2 Ashok Kashelkar v Rubin & Rothman, et al

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Statement Of Petitioner

Ashok Kashelkar, petitioner herein, respectfully states, that, the within "unusual nature of record" in the District Court [Southern District of New York, White Plains and The Court Of Appeals, for the Second Circuit throws "substantial light" upon the "peculiar method adopted by the Federal Judges [Courts] and by the staff members, particularly in the Court Of Appeals for the Second Circuit.

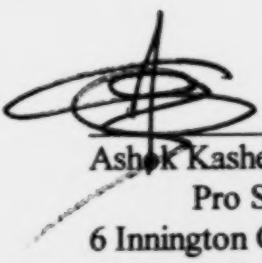
This Appendix C offers material conforming to Rule 14.1(i)(vi)

This petition is submitted in conformance with U. S. Supreme Court Rule 12.4, in view of the "substantially same and\or similar" questions presented in the Petition and the issues have been raised in the lower Court.

This Appendix, is a "combined" Appendix, for the two cases covered by this Petition.

Spring Valley, NY

Dated July 22, 2001



Ashok Kashelkar
Pro Se Petitioner
6 Innington Court
Spring Valley NY 10977
Tel. (845) 426 2902

I filed the following affidavit, in the Court Of Appeals and forms part of the Appendix-in the appellate process. This affidavit was filed, to reflect upon the "Transcript of Oral Arguments" in the U. S. District Court, in MacCartney matter, on Nov. 05, 1999.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

ASHOK KASHELKAR — Docket No. 00-7090

Plaintiff - Appellant

-against- — Affidavit Of Plaintiff Appellant: Issues of USDC Transcript

HAROLD Y. MacCARTNEY, ET AL

Defendants \ Appellees

----------X

ASHOK KASHELKAR, Plaintiff \ Appellant, appearing Pro-Se, before this Court; in the subject matter, deposes and states as follows.

1) I offer this affidavit relating to absolutely *Extra-Ordinary Circumstances, reflecting upon "prejudice and\or hostility" in U. S. D. C. Judicial Proceeding* and in support of this appeal.

2) I am aware, that, in the "appellate process", evidence is not offered. This affidavit does not offer any "evidence " relating to the *events leading to my filing the action* in the U. S. D. C. SDNY, on July 05, 1999.

3) This affidavit, offers, information and facts relating to the developments, " predominantly relating to " the Initial Conference" in District Court, before Hon. Colleen McMahon, on November 05, 1999 and subsequently, documented through correspondence in this case and in the Transcript of another "Initial Court Conference of Feb. 29, 2000", [identified in paras 58 and 59 of this affidavit]; that is on the USDC Court Record.

4) When, I filed this "action" in the Southern District of New York, Clerk's Office; this matter was "originally" assigned to Hon. Koeltl by the "lottery ", that was drawn in my presence. Then, the matter appears to have been assigned or transferred to U. S. Magistrate Buchwald and then it appears to have been transferred to Hon. Colleen McMahon, at White Plains, NY.

5) By an "order of the Court", entered Sept. 13, 1999; Hon. Colleen McMahon, notified your deponent, that, the Court scheduled a conference; on November 05, 1999, at 9.30 AM. Copy of the District Court letter [excluding the Individual Judge's rules] is attached herewith as Exhibit AP-01.

6) After the Summons and complaint was served on the defendants, I did not receive any communication from any of the defendants, prior to receiving their "motion papers".

7) I did not have any concept, as to what I might face in the District Court and what kind of questions, I might face

from the District Judge.

8) I appeared in the Court, before Hon. Colleen McMahon, on the "scheduled date and at the designated time". After greetings were exchanged, I responded to the Court's question and informed the Court, about the basis of my Federal action. Most of it is on Page 4, beginning on line 14, that continues on to page 5. The Certified Transcript of the Preliminary Conference is attached as Exhibit AP-02.

9) Then the District Judge , began to express " her philosophy" about the "interpretations and application of " N. Y. State Laws", etc; that can be observed from Page 5 onwards.

10) The District Judge inquired of each of the defendant Counsel, as to whether they "moved to dismiss" [Page 6 Line 9 to line 23] and the answers have been in the "affirmative".

11) On page 7, the District Judge made clear statement, lines 6 to 10, to the effect, that, the *alleged* misconduct of the defendant's "abuse of the State Procedures" was not of any consequence as far as my claims for "lack of due process" were concerned.

12) The District Judge asked me a question as to why I was in Federal Court and I responded.

13) It is my contention, that, the **"exact question and my exact answer"** are not appearing in the transcript, on page 8. *There is change in the* "words exchanged, at that time". Therefore the connotation, in the present form "differs significantly", from my expressions in response to the District Judge's question.

14) On page 8, line 4 to 7; District Judge appears to have reached a "foregone conclusion" that, I could not "overcome" the question of Judicial Immunity of Bruce Muldoon.

15) On page 8, beginning line 22 the District Judge commented with a conclusionary remark that, she would *"dismiss my case"*, for the reasons she has expressed. To me, *it was the first indication*, that, District Judge '*had already made up her mind"*, to dismiss my case.

16) At the end of page 8 and beginning of page 9, the District Judge has expressed her opinion about "state litigants, losing in State Court and going to Federal Courts". Her remarks have "swept" an entire segment of population of litigants.

17) On page 9, I engaged in a dialogue about "false denial and true denial", as reflected between line 8 and line 21. I was surprised, at the District Judge's responsive remarks, therein.

18) I have remarked, on page 9, lines 22 to 24; that my contentions are not based upon "*my thinking* but are based upon NYS Court rulings."

19) On page 10, I introduced the "14th amendment of U. S. Constitution" aspect, applicable to the New York State Courts, Court employees and practicing attorney, as seen in line 4 to 6. District Judge's response is in lines 7 to 11 and refers to "state action papers".

20) On page 10, I raised the issue of "perfunctory actions".. ..on line 23 and the District Judge responded with remarks on line 24-25.

21) On page 11, I expressed that the Appellate Division of the New York Supreme Court or the Court Of Appeals, were not named as defendant, in the action. I specifically remarked that the "case is against individuals" [Line 7 to 12], who were responsible, for the misconduct leading to the "result in State action."

22) Then the District Judge asked me, if I "have any proof, supporting my claims" [I am only paraphrasing, here]. *The particular question of the District Judge, to me, does not appear in the transcript.* That question has been altogether eliminated, from the transcript.

23) The *"peculiar inquiry for proof"* was very "unusual", at the "initial conference". I was surprised at the question. Nevertheless, *the question* District Judge "posed me" *does not appear* in the "transcript" in the *present* form.

24) The "transcript" *has been changed* and it "re-creates and rearranges record", as reflected in the lines 13 to 19, forming that to be a part of my statement. *That is inaccurate.* The "re-arranged" RECORD [as innocuous as it may sound], in the lines "13 to 19" in reality, is NOT MY STATEMENT.

25) My response to District Judge's question was a short, " I do not have a smoking gun". The transcript reflects a long statement [Page 11, line 13 to 19], that I did not make.

26) What is missing is *either one or two questions* and statements of the District Judge, between line 7 to 19. Were "those questions", to appear in the transcript [as they originally were expressed]; they would have conclusively demonstrated and reflected upon "bias and prejudice on the part of the District Judge, towards me and \ or my case."

27) The reason, I responded with a short sentence was the way the "Court's question" was formulated. Such questions, certainly need not be asked, at the time of an initial conference. We were not conducting a Trial. That was not a "conference, conducted subsequent to completion of discovery and the one to be held before a Trial". I was not "moving, with a request for Summary Judgement" and this was just a preliminary conference, with the District Judge.

28) The district Judge got upset [the transcript does not fully reflect that] and her remarks are substantively reported from line 1 to 9 on page 12, reflecting "monetary sanctions".

29) On page 13, line 16 the district Judge said.. "I only read their papers"... referring to the defendant's submission and was looking at Mr. Sanders. [The transcript, does not reflect, where the District Judge was looking, at that time.]

30) I, therefore strongly believe, that the District Judge *"did not even read anything I ever served, filed and submitted."*, including my detailed complaint and my opposition to all the defendant's motions.

31) On page 13, from line 15 to 21, the District Judge expressed "limitation" of her authority and I responded from Line 22 \ page 13 to 2 \ page 14; that I was "not asking to reverse the State judgement."

32) On page 15, the district Judge appears to have referred to "16 boxes, full of material" in the back [office], submitted by other litigants, not connected, with this actions. The quality and "substance" of those papers, appear to have became the "measuring glass" and or "criteria" for deciding my case. I did not "re-invent" anything. I stated my case.

33) On page 15 line 8, Mr. Sanders asks about.."not replying in opposition "..and the District Judge appears to have accepted that concept..on line 10 to 12.

34) To this appellant, those expressions of Mr. Sanders [para 33 above] appear to be a "foregone conclusion, well understood" by Mr. Sanders [who seems to have appeared before Hon. McMahon]; that the case against his client, Mr. Bruce Muldoon will be dismissed.

35) At that very time, I got a "sixth sense" feeling that, I was "whistling in the wind."

36) Sensing, the "direction of the winds- blowing in my face", I asked about copy of the transcript [Page 12, line 21-22] and the very reason to ask for the "transcript" was to "obtain the exact transcription of the proceeding".

37) I decided to acquire the transcript, to "quote" the sequence and exact words of the District Judge, to show, that the District Judge was prejudiced, during the USDC proceedings. I did not expect, that, the "transcript" would be changed. I was not informed, about the changes, which, later took place, in the transcript.

38) I also "noticed" that, the District Judge used a "tone of voice", during the entire proceeding, that was unusually harsh, that conveyed and demonstrated "distinct displeasure towards me", for all the reasons, the District Judge may know. It even created an impression, on my mind that, the District Judge, wanted to "throw me out of her Court Room, almost at that moment".

39) I did not understand, at that time, as to what "wrong" I had committed, towards the District Judge; nor I have

understood, why the Judge's responses, in the "preliminary conference" were "so prejudicial to me" and I certainly fail to understand, the prejudicial steps of changing the transcript, to what is *"UNTRUE"*.

40) I can demonstrate to this Court, in how many different ways, one can say a few words, ***with different intonations*** (without changing even a syllable in the same statement or expression), to convey diametrically opposite "sense and emotions". I considered the "intonation" of the District Judge went to the "crux" of her "emotional" state of mind- *"leaning towards the defendants"*.

41) I immediately contacted the Court reporter's office and found out that, I have to pay over $4.40 per page for a report within 7 days. The Court reporter, in subsequent conversation indicated, that the "transcript" may be about 25 pages in length and hence, I sent $ 110.00, check; with a written request to the Court reporters office at Foley Square, in NYC, on Nov. 05, 1999; that the Office Of Court Reporters received on November 08, 1999.

42) Almost two weeks passed after the "Court appearance" and I did not receive the transcript, from the Court reporters. In fact I should have received the transcript, within two weeks; of my Court appearance; since ***I had paid necessary higher fee*** for such service. Hence, I called their office and spoke to several individuals. After the Office of Court Reporters inquired with the reporter in White Plains, I learnt that the Transcript will not be available for several days, since it was not transcribed. I reminded the "office manager" that I had paid EXTRA, for "speedy delivery".

43) I continued to press the Court Reporter's office and after it inquired at White Plains; I was informed that, the

"Transcript" will be sent to the Judge's Chambers and *upon it's approval*, I will get a copy. That sounded very strange.

44) I asked the Court Reporter's office to "put the "very" statement in writing" and send it to me. The Court Reporter's Office sent their letter, dated November 24, 1999. That is attached as **Exhibit AP-03**.

45) The letter does not refer to the word " Judge's approval" but states, "upon it's return by the chambers"

46) Of course, a Judge may ask for a Transcript, like any other record. But, that is a different matter, than, the reporter automatically [or on account of instruction to do so] *sending a "transcript" to a Judge, for review*; before it is released, to a litigant.

47) Eventually, the Court Reporter's office deposited the certified "transcript" copy in the mail on Dec. 03, 1999 [Postal Franking meter stamp]; that I received on the 7th of December 1999, my response in opposition defendant's motion, was due on December 06, 1999.

48) Subsequently, I inquired, at the Office Of This Court's Clerk, as to "how I may bring this matter, to the attention of the Court Of Appeals" and found that, I could "file a complaint" with the Office of The Clerk. I also found a "caveat" that, should a complaint relate to "a Court decision" it would "more likely" be "dismissed".

49) The objective of "raising this issue" is not to seek any PUNITIVE ACTION of any nature [as the printed information from this Court suggests], but to seek "JUSTICE" in the purest sense and assist in JUST ADMINISTRATION. For that reason, I have not filed a

FORMAL "complaint" about District Judge, Hon. Colleen McMahon but must bring the matter to the attention of this Court, for the sole reason; that, the entire episode raises serious questions about "impartial judicial process" in the District Court, where my case has been decided.

50) Making changes, in the transcript, without my knowledge, consent and \ or acquiescence is highly prejudicial to my rights and interest, as well as to the principles of "substantial justice".

51) Thereafter, I served and submitted my "opposition" to the defendant's motion on December 06, 1999; under considerable difficulty. I could see that, my "law memo" was completely "out of character" and I could not "formulate my arguments" in the desirable, format.

52) I received a letter from the District Court, dated December 10, 1999, attached here as **Exhibit AP-04**. It appears to show considerable confusion, in 2nd para. The Hon. District Judge wrote, that, I submitted "box full of Affidavits, Exhibits and records from the State Court Proceedings". Since, my submission included a December 04, 1999 affidavit, with some Exhibits and memorandum of laws, I failed to understand the "basis" of the Hon. District Judge's *comments and conclusions* [in Dec. 10, 1999 letter] ; to the effect that, I had served and filed the "state action papers, on Dec. 06, 1999, in the Court".

53) For the reasons cited in the Dec. 10, 1999 letter, the District Court extended time for me to prepare, serve and file my "opposition" to Motion for Summary Judgement to Dec. 17, 1999.

54) Even though, there is a"vague" reference to this

Court's ruling [relating to the Summary Judgements], the District Judge's letter did not cite any case and I still do not know, *to which particular ruling*, the letter refers to.

55) I am grateful for the extension of time [para 53 above], the Court provided, me.

56) The Decision of the Court is dated December 22, 1999 and it reflects the "pleas of all the defendants." It does not refer to "ANY " aspect of this appellant's complaint and or this appellant's submissions, in opposition to the defendant's motions.

57) The matters took another "curious" turn, on Feb. 29, 2000.

58) On Feb. 29, 2000, I was appearing before Hon. Colleen McMahon, in the same Court Room, in another of my matter, entitled Ashok Kashelkar v Rubin & Rothman, et al, under Case No.99 CIV. 10281(CM) and during "that" preliminary conference, Hon. Judge Colleen McMahon made the following comment:

> Mr. Kashelkar, last time (meaning during the "MacCartney" matter) you submitted a *THREE FEET STACK OF PAPERS*, to me. Please do not submit such papers, this time.
>
> I said," May I say something, your Honor ?" and upon receipt of permission from the Court, I said,
>
> "It was the MacCartney Law Firm, that, submitted the *stack of papers*. My submission was much less than that".

Then Hon. Colleen McMahon said that her honor, "may be exaggerating." That was the end of discussion of MacCartney matter.

59) It is also correct, that, according to the individual rules of District Judge McMahon, the District Judge wants "Original plus Two copies", to be filed in Court. Hence, there are "triple the quantity of papers" winding up, in her office. It is also correct, that one set of MacCartney submission including Motions, Exhibits, Answer and law memo, is almost a FOOT high, stacked up, flat on a table top.

60) This exchange of February 29, 2000, confirmed my belief, that, the District Judge completely "misunderstood", as to which "papers" I submitted and "which papers" were submitted by the defendants.

61) During the Feb. 29, 2000 "conference" the ***District Judge did not pose any questions to me***, as to why I was, "in the Federal District Court, with my complaint" as I faced the situation, described above, at the beginning of this affidavit. This conference was very short and lasted less than 5 minutes.

62) The "unusual set of circumstances, I have described above" would constitute, the " unusual methods of law enforcement, in the District Court of District Judge Hon. Colleen McMahon, I have faced, in this matter".

63) I respect the "Judiciary" as an institution, trusts it's authority but do not accept the "subjugation", at the hands of any individual.

WHEREFORE, this is to respectfully request, this Court, to take the "totality" of ALL the circumstances in consideration,

during the *de novo* review of this matter under appeal and dispense substantial Justice, to this appellant.

Dated: May 09, 2000
at Spring Valley, NY

Sd----------
Ashok Kashelkar

Sworn to before_____
On May 09, 2000

Notary..... Sd. Jill Rothbaum
Notary Public State Of New York
No. 44-4757575
Qualified in Rockland County
Commission Expires on March 30, 2002

SOUTHERN DISTRICT REPORTERS, P. C.
Official Court Reporters

United States Courthouse 500 Pearl Street
New York, New York 10007

Tel. (212) 805-0300 Fax (212) 805-0355
Faxed to: 914-426-2902

November 24, 1999

Mr. Ashok Kashelkar 6 Innington Court
Spring Valley, New York 10977

Re: Kashelkar v MacCartney 99 C iv. 5132 (CM)

Dear Mr. Kashelkar:

At your request, this letter is to confirm the information I gave you yesterday, November 23rd, regarding the status of

your transcript request in the above-entitled case.

We take note of the fact that your request was accompanied by your check on November 8th, for preparation of the transcript within five business days. Unfortunately, due to the pressures of covering the White Plains court, the reporter was not able to meet that commitment, for which we apologize. She has assured me that the transcript will be ready by Monday, November 29th for submission to Judge Colleen McMahon for review.

As soon as it is returned by chambers, we can then release it to you. Of course, the rate charged will be reduced from intermediate to a regular delivery rate of $3.30 per page.

We appreciate your patience and understanding in this matter.

Very truly yours,

Sd Nelida Capizzi

Nelida Capizzi
Office Manager

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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2----------x
3 ASHOK KASHELKAR ,
4 Plaintiff,
5 v. 99 Civ. 5132 (CM)
6 HAROLD Y. MacCARTNEY, et al.,
7 Defendants.

8----------x

9 White Plains, N.Y.
November 5, 1999
10 9:35 a.m.

11 Before:
12 HON. COLLEEN McMAHON,
13 District Judge
14
APPEARANCES
15
ASHOK KASHELKAR
16 Plaintiff Pro Se
17
MacCARTNEY, MacCARTNEY, KERRIGAN &
MacCARTNEY
18 Attorneys for Defendants
J. DAVID MacCARTNEY, JR.
19
20 OFFICE OF NEW YORK STATE ATTORNEY
GENERAL
Attorneys for Defendants
21 CHARLES F. SANDERS
22 Assistant Attorney General
23 GARCIA & STALLONE
Attorneys for Defendant
24 KARL ZAMURS
25

1 MR. SANDERS: Good morning.
2 Charles F. Sanders, S-A-N-D-E-R-S, Assistant
Attorney General.
3
4 THE COURT: Good morning, Mr. Sanders. It's nice
5 to see you.
6 Who do I have from MacCartney?

MR. MacCARTNEY: Good morning. My name is David MacCartney for Harold MacCartney and the firm.

MR . ZAMURS : We represent McManus and McGinnis and William Watson.

THE COURT: Okay. Have a seat, gentlemen. Mr. Kashelkar, please tell me what your case is about.

MR . KASHELKAR : This case arises out of my filing an action in Rockland County in 1995 against a motorist, Levine, her husband and her insurance company, that is, Government Employees Insurance Company, GEICO. This arose out of the accident that happened on March 30, 1992. And I sued the Levines and GEICO. I sued the Levines for the damage that was caused to my car. My son was driving the car at the time.

THE COURT: Sir, I don't need to know the details. Tell me what happened to the state court case.

MR . KASHELKAR : The state court case, basically, after filing the summons and complaint is the first time I

found out that GEICO was fined by the Insurance Department for committing insurance law violations. My claim against GEICO was he had failed to settle my claim, and I amended

the
complaint to say that they were fined by the Insurance Department. This is a public record. As a result of that,
the answer that was filed by MacCartney in behalf of the
Levines was a basic boilerplate kind of denial answer. And in
denying the existence of a Rockland County road --
THE COURT: They filed, I'm sure, what's known as a general denial.
MR . KASHELKAR : General denial.
THE COURT: Is that correct?
MR . KASHELKAR : Yes.
THE COURT: Mr. MacCartney, you filed a general denial?
MR. MacCARTNEY: Well, there were a number of specific denials, as well, your Honor.
THE COURT: That's commonly done. It means that they
put you to your proof. That doesn't mean there is no such
road in Rockland County, but it means they're putting you
to your proof.
MR . KASHELKAR : GEICO also filed an answer denying
that GEICO ever paid any fines or were examined.
THE COURT: I would like to know why you're suing the
MacCartney firm and why you're suing representatives of the

4

state who are being represented by the Attorney General's

Office. I want to know why you're --
MR . KASHELKAR : Because of what happened subsequently. Because the suit against the Levines --
THE COURT: You lost.
MR. KASHELKAR : No, not because I lost. It is not because I lost, but the manner in which the loss occurred.
THE COURT: I see.
MR . KASHELKAR : This is not about the particular accident or what happened with GEICO. This is the process
which took place.
THE COURT: Tell me what it is about the process that
you feel has aggrieved you.
MR . KASHELKAR : What aggrieves me is, basically, when
a motion was filed by GEICO attorneys for amending my bill of
particulars, I filed a cross-motion for summary judgment and
submitted proof of GEICO's wrongdoing. And as a result of
that, when I submitted the proof and I requested that I would
like to call the Insurance Department employees to testify
that my submission was correct, and I requested a hearing
under 3212 and 2218 the CPLR of New York State -- I filed
that, it was served -- then a cross-motion for summary judgment was filed by the MacCartney firm in behalf of Levine.
The motion submitted by GEICO was returnable

July 21st, 1995. I served my papers on July 14, 1995. They

were received by counsel for both the parties at least by July 18, 1995. MacCartney prepared a cross-motion for summary judgment with an affidavit of Mr. Levine. It was prepared on July 19, 1995. It was actually served by mail on July 20, 1995. That was in violation of CPLR 2215, which requires that a cross-motion --

THE COURT : I know what CPLR 2215 requires.

MR. KASHELKAR: As a result, what happened, attorneys for MacCartney wrote to the Court that all the motions should be adjourned to August 18.For that purpose, I never consented to that.

THE COURT: It doesn't matter. The Court doesn't need your consent to adjourn.

MR . KASHELKAR : Well, the requisites of the --

THE COURT: Mr. Kashelkar, let me explain something to you.

This Court does not sit to enforce any state court litigant's understanding or interpretation of the rules. Now, I understand that you have appealed the dismissal of your case all the way up to the New York Court of Appeals. Is that

correct?
MR . KASHELKAR : That is correct.
THE COURT: And you have lost every step of the way;
is that correct?
MR . KASHELKAR : Yes, but it's a matter of the

process.
THE COURT: No, you had all the process that you're
entitled to, Mr. Kashelkar.
MR. KASHELKAR: That's exactly what I'm questioning.
THE COURT: Well, I understand you're questioning it,
but I don't have the ability, Congress has not given me the
ability, to say that the Courts of the State of New York are
interpreting -their own rules incorrectly.
Now, Mr. Sanders, you're representing whom?
MR. SANDERS : Bruce Muldoon, who is the law secretary
to the Honorable Robert Meehan, the justice of the Supreme
Court, Rockland County.

THE COURT: All right. Have you moved to dismiss?
MR. SANDERS: Yes, I have, your Honor. I filed the
papers and served them on all the parties.
THE COURT: Mr. MacCartney, there were a lot of
papers from your office yesterday. That's a motion to dismiss
on behalf of your firm?
MR. MacCARTNEY: Yes, that's right, and on behalf

of
Mr. MacCartney personally.
THE COURT: And how about you, Mr. Zamurs?
MR . ZAMURS : Yes, I made a motion also to dismiss,
your Honor.
THE COURT: All right. Now, Mr. Kashelkar, all of these parties have moved to dismiss.

MR . KASHELKAR : I understand.
THE COURT: The only rules that matter here are my rules.
You have two weeks from today's date, sir, under my rules, to put in papers explaining to me why I should not
grant the motions to dismiss. The fact that a case was adjourned in the State Supreme Court when you didn't want it
adjourned, o~ that motions were consolidated, or that you lost
in the State Supreme Court, are not reasons for me to conclude
that due process was violated here.
MR. KASHELKAR: Well, may I say --
THE COURT: You can say whatever you want.
MR . KASHELKAR :-- the decision and order of the Rockland court says that there were improprieties. It is
written in that decision.
THE COURT: But that doesn't make any difference. That doesn't mean that your constitutional right to due
process was violated. If the improprieties affected the validity of the decision, the appellate courts in New York

would have overturned it. They did not. Therefore, the impropriety, as a matter of New York law, did not affect the validity of the decision.

You had a chance to argue otherwise. That's what we mean by due process. Due process means you have a chance to present your argument, to try to prevail. That is all that

we mean by due process in the constitutional sense. So if that's all you can come up with, I can tell you that I will grant the motions to dismiss.

Now, certainly, Mr. Muldoon has other grounds, on which I'm sure Mr. Sanders moves, of judicial immunity, which extends to an employee of the Court. And I don't see how you're going to be able to overcome that.

But I'm going to give you two weeks. And by two weeks from today, you have ~o put in papers, you have to serve copies on all three of these gentlemen, you have to serve three copies on the Court, one for the file downstairs and two for in my office. That's in accordance with my rules.

Are there copies of my rules in the back?

THE DEPUTY CLERK: Yes.

THE COURT: You should take a copy of my rules.

MR. KASHELKAR: I have a copy.

THE COURT: You have a copy. Very good. So I'm actually giving you an extra day, because these motions appear to have been served yesterday. I'm giving you until two weeks from today to explain to me why you think there is a federal constitutional violation. Now, I have to tell you, there is a common misconception among lay litigants, not trained lawyers, but persons like yourself, who have an absolute right to come into court. The common misperception is that the federal courts

are here to correct wrongs that they think were done to them in the state court where they lost. That's just wrong, as a matter of law. And if you can't come up with anything other than that, I'm going to have to throw your case out. I just want you to understand that.

MR. KASHELKAR: May I make a statement?

THE COURT: You may say anything you like.

MR. KASHELKAR: It is not just that as to what I have said so far. It happened before that I was denied access to get a subpoena from Judge Meehan for the purpose of obtaining the record. Then what I've said so far, basically, mailing

what is called the false denial. Denial, I understand, can be
either true denial or false denial.
THE COURT: No, you understand incorrectly. In the ordinary course, a defendant denies the allegations of the
complaint. And all that means is: "I'm not going to admit
that what you say is true. I'm going to make you prove it."
And at law, that is perfectly permissible. It is perfectly permissible. There is nothing wrong with it. You may think
strange, but that is because you are not trained as a lawyer.
MR . KASHELKAR : But I'm not saying because I think it
is strange. I'm saying because that's what the courts of New
York have said before.
THE COURT: Well, they don't make it strange enough

to reinstate your complaint, sir.
MR . KASHELKAR : I cannot say as to what transpired in
the minds of the people who were reading my papers. It is

impossible for me to say that. I am saying that this case
arises out of denial of the protection of the Fourteenth Amendment, that the state has the obligation --
THE COURT: I hear what you're saying. You can put

it in the papers. You have as many as 25 pages to convince me. You can put in, in addition, any records from the state court that you have in your possession, any papers. Please don't give me all your filings from the state court.

MR. KASHELKAR : No, I won't.

THE COURT: But you can show me anything that you think will persuade me that there is a constitutional violation here. But a constitutional violation is a very big thing.

MR. KASHELKAR : Yes.

THE COURT: All right? And it's not just that somebody misapplied the CPLR or misinterpreted it, or that an appeals court did not do what you wanted them to after a trial court has thrown out your case. Those are not denials of due process.

MR. KASHELKAR : Perfunctory kind of action.

THE COURT: Perfunctory action is not a denial of due process.

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MR. KASHELKAR: But it is all appearance and no substance. I mean, there may be an appearance of --

THE COURT: Mr. Kashelkar, I can't sit in judgment on whether the Court, be it the Supreme Court or the Appellate

Division or the Court of Appeals, gave your case the attention that you think it deserved.

MR. KASHELKAR: Well, it is not a case against the Court of Appeals or the Appellate Division, anyway. The case is against the individual who contributed by their own acts, by omission or commission, which gave the appearance that the due process was actually applied and/or was there in this matter. So I'm claiming it was not.

You see, the reason why anyone goes to any court is, it is not possible to provide a smoking gun kind of evidence right at the time of filing the complaint. All I can file is what is there. And I'm saying besides the civil rights, there is a RICO action that I have, and the mail fraud. And there are very many cases in U.S. Supreme Court as to what constitutes mail fraud.

THE COURT: Well, I'm familiar with those cases. I doubt very much that you can bring yourself within them. But you have 25 pages and 14 days to convince me that you can, sir. Then I will give your motion such consideration as I give to all motions. And I will decide whether or not the case is dismissed, or whether you can proceed to discovery.

But I must tell you that if you were a lawyer, sir, and if you had come into my courtroom and you had said, "I filed this case, because I don't really have a smoking gun here, but I filed a lot of different kinds of claims because I can open up discovery, and I can find the smoking gun that will convince you that what I know in my heart is right," I would, and I would have every right to, impose monetary sanctions on-that lawyer, because that is not why people are supposed to come to court.

Now, this matter is going to be taken under submission. You folks have your motion papers in. You have two weeks to get your responsive papers in.

MR . KASHELKAR : May I ask, your Honor, whether another motion for summary judgment from the MacCartneys --

THE COURT: Yes, that's correct. That's permissible. You need to file a statement in accordance with Rule 56.1 of the local rules of this Court in response to that motion. And if you don't, everything that he says in his papers will be accepted as true. That is what the local rule says. You must comply in every particular with the rules, Mr. Kashelkar.

MR . KASHELKAR : Sometime, may I get the copy of the transcript of these proceedings?
THE COURT: As long as you're willing to pay for it.
MR . KASHELKAR : Okay.
THE COURT: You make those arrangements directly with

the court reporter.
MR. KASHELKAR : And do I have to submit the response within two weeks?
THE COURT: You do.
MR. KASHELKAR : Can I get any more time?
THE COURT: I will give you four weeks.
MR . KASHELKAR : I appreciate that.
THE COURT: All right. Four weeks from today.
MR . KASHELKAR : May I inquire about the matter about the discovery?
THE COURT: There won't be discovery until I have decided this motion.
They have said that you don't even begin to state a claim.
MR. KASHELKAR : I understand.
THE COURT: Until I decide that -- if I agree with them -- and, of course, I only read their papers. But if I agree with them, then I'm going to dismiss the case. And therefore, there can be no discovery.
And I've already told you that I'm not a super appeals court looking at how the state court applies its own

rules. That's not what I'm allowed by Congress to do.
MR. KASHELKAR : I'm not even claiming that. I am questioning the actions of the people who are not parties to
that claim. That's all. I'm not saying these same defendants
were parties to that action. So whatever may have happened in

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that action, that action, as far as that action, I'm not asking to reverse the judgment.
THE COURT: All right, Mr. Kashelkar. Submit your papers in four weeks. I'll want brief replies.
MR. KASHELKAR: Your Honor, may I --
THE COURT: No, I've talked to you for a half hour. I need to --
MR. KASHELKAR: One question.
THE COURT : Yes.
MR . KASHELKAR : How soon I have to serve the papers
on the counsel?
THE COURT: You serve it on them the same day you
serve it on me, four weeks from today. If you get it done
earlier, you can --
MR . KASHELKAR : Do I have a return date?
THE COURT: There is no return date. Under my rules,
I take motions under submission unless I feel a need for oral

argument. I think I probably will be able to decide this on
the papers.

MR . KASHELKAR : May I request oral argument?
THE COURT: You may request it, but I don't automatically give you oral argument. So put it in your papers, sir. Ordinarily, I don't hear oral argument on motions. It's a very rare motion where I hear oral argument.
All right?

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MR. KASHELKAR : Thank you.
THE COURT: That's in my rules, too.
Now, I want brief replies. I think that I'm familiar enough with these kinds of issues. I've had several of these cases recently. Don't try to re-invent the wheel on the replies, since I have 16 boxes of materials in the back. All right?
MR. SANDERS: If we choose not to reply, is submission of a letter --
THE COURT: Submission of a letter will be quite satisfactory. And Mr. Sanders, I'll be very happy to see that.
MR. SANDERS: Fine
THE COURT: All right ?
MR. SANDERS: Yes.
THE COURT: All right. Thank you.
MR . KASHELKAR : May I ask one question?
THE COURT: Yes, sir
MR . KASHELKAR : In consideration of the fact a number of documents have been submitted on the record, in order to avoid re-submitting these documents, may I refer to

those
22 documents?
23 THE COURT: Oh, you absolutely may.
24 MR . KASHELKAR: I don't want to make two submissions.
25 THE COURT: I would appreciate if you would do so.

1 Thank you.
2 MR. KASHELKAR: Thank you.
3 ALL COUNSEL: Thank you, your Honor.

I (WE) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of the proceeding.

Sd. Mary M. Stanton
Official Court Reporter
U. S. District Court

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
300 QUARROPAS STREET WHITE PLAINS. NY 10601

914-390-4146

CHAMBERS OF COLLEEN MCMAHON
DISTRICT JUDGE

10 December 1999

Ashok Kashelkar 6 Innington Court

Spring Valley, New York 10977

Re: Case No.99 Civ. 5132 (CM)

Dear Mr. Kashelkar:

This Court has received your filings, made December 6, 1999, in opposition to the motions to dismiss or for summary judgment that have been made by each of the defendants.

Because the MacCarthy law firm has moved for summary judgment, I am required by a recent ruling of the United States Court of Appeals to advise you that judgment will be entered against you dismissing your complaint if you do not establish the existence of a genuine issue of material fact (material in the legal sense, not necessarily material to you) so as to compel a trial in this action. You must do this by providing evidence in the form of testimony, affidavits and/or exhibits for consideration by the Court. You may not rest on conclusory statements.

By sending you this notice, I do not mean to suggest that you have done precisely what is required of you. You have sent me a box of affidavits, exhibits and records from State court proceedings that you believe to be relevant to your constitutional claim. However, you are proceeding pro se and I wish to comply in every particular with this new ruling of our Court of Appeals. Therefore, if you believe that there is any evidence to support your claim that you have not already sent to me, or if you find, on reviewing your submission, that some of your "evidence" is in fact conclusory and therefore inadequate, this is your last chance to correct matters. You have until next Friday, December 17, to send in anything else you believe would be required under the pertinent Federal Rule of Civil Procedure (Rule 56) to defeat the motion for

summary judgment.

This notice does not apply to any motion to dismiss made under Rule 12 of the Federal Rules of Civil Procedure.

A copy of this notice is being sent to counsel for all of the defendants.

Thank you for your attention to this matter .

Sd_____
Colleen McMahon
cc: J. David MacCartney, Jr.
MacCartney, MacCartney, Kerrigan & MacCartney
13 North Broadway
P .0. Box 350
Nyack, New York 10960

Charles F. Sanders
Assistant Attorney General
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120 Broadway
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Karl Zamurs
Garcia & Stallone
Greenway Plaza Office Park One Greenway
135 Pinelawn Road, Suite 220N
Melville, New York 11747-3160

Case No. 1.... Kashelkar v MacCartney

I filed my Motion with affidavit, dated March 16, 2001. It is produced below. This was submitted with Motion form Page 18, 19 and 20 of Appendix B.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ASHOK KASHELKAR — Docket No. 00- 7090

Plaintiff - Appellant

-against -

Affidavit in support of Motion

HAROLD Y. MacCARTNEY, ET AL

Defendant' Appellees

Motion to Reconsider, Vacate or Modify this Court's decision of March 09,2001 and the Mandate of March 09,2001; pending a final decision by this Court on Request for granting a "Petition for En Banc hearing" and kindly accept my petition for En Banc hearing.

I, ASHOK KASHELKAR, Pro Se Plaintiff Appellant; in the within matter; am fully familiar with the proceedings heretofore had; deposes and states as follows:

1) On March 14, 2001; I received decision of this Court; entered on March 09,2001; that has denied my previous motion to "enlarge time" to serve and file a petition for En Banc Hearing. The same is attached hereto as Exhibit 01.

2) The "decision" itself shows, that my motion papers were received in the Court, on Feb. 21, 2001.

3) The motion requested [as reflected on the same paper], enlargement of time from Feb.23, 2001 to March 09, 2001; to prepare and serve my Petition for En Banc hearing.

4) I did not receive any response to my above motion, till March 14, 2001. The attached copy of the envelop will show that, it was "placed in the U. S. Mail on March 12,2001".That is my Exhibit 02.

5) Based upon my understanding of the FRAP Rule 35; I filed the motion and continued to work on the petition for En Banc hearing, subsequent to filing the said motion.

6) I proceeded to prepare the "arguments" as I assured the Court, through my affidavit, in support of my petition for En Banc hearing; for service by March 09, 2001 ; without waiting for "any decision", from the Court, on my motion.

7) I was also working, to ensure that, I would have the bare minimum income to support my family and myself; during the entire period, since I served the Motion papers, on Feb. 17, 2001. Of course, I continued my work on the petition, at the same time, that included some more research.

8) During the week beginning March 05, 2001; the "predictions of snow storm of the century" disturbed my "overall" activities, like those of several millions other people in this region.

9) By late afternoon, on the 6th of March, 2001; I realised that, after reading the FRAP Rule 35 again and again, it appeared to me, that I may not have to submit "extensive arguments" since most have already been offered [the Motion Practice] in USDC and

continuing to the previous Petition for Panel Re Hearing, that "summarily" was denied on Feb. 09, 2001. But I was not certain about "my understanding of the FRAP Rule 35".

10) I do not have any advisors and or consultants available, to discuss the "meanings and implications" of each and every rule.

11) In order to ensure that, I do not " default " in the matter and therefore; primarily and solely to protect my own interests, rights and property; I proceeded to prepare the Petition, comprising of "list of over 150 cases decided by the U. S. Supreme Court, in the last 200 years; 20 cases decided by this Court and 6 cases decided by other Circuit Courts".

12) Based upon my new understanding, I prepared my observations relating two cases, decided by this Court; and those the USDC cited, in reaching it's decision in my case; which I found are subject to questions and contravene the decisions of U. S. Supreme Court and one decided by the New York State Court of Appeals, as well as some of the Federal and State Statutes.

13) I completed, the petition on the night of March 08, 2001 and the receipt from KINKO, shows, the copies were made a 11.32 PM. The receipt from KINKO will form my Exhibit 03.

14) Friday, the 9th of March was another "snow event" in my area, if not in New York City; I spent most of the day, in correcting the "petitions" in RED INK; that is evident in each petition, now, on the Court's record.

15) I went to the Monsey, NY Post office and mailed the Petitions to all parties\counsels and this Court. The

"time" is reflected in the U . S. P. S. cash receipt. Exhibit 03.

16) By the time, I mailed the petitions, I was not aware of the "decision" this Court had, reached "on that day".

17) Proof of Service by U. S. Mail, in the nature of"Stamped USPS Form 152, March 1999";showing my mailing the petition is attached hereto as

Exhibit 04.

18) I have also received copy of the Mandate of this Court, dated March 09,2001, with "adjusted amount" of$ 404.94; taxed and payable to MacCartney et al. [two pages] Exhibit 05.

19) In view of the fact, I have always pleaded that, the decision of the USDC was issued in error and in contravention of the U. S. Supreme Court cases; the thrust of my arguments, have always been that, the decisions and the judgements of the USDC have been in violation of the U. S. Supreme Court decisions.

20) It is also correct, that, my "motion to enlarge" the time was "received in the Court" on the 21st of February, 2001 but was not acted upon till the March 09,2001; that crucial passage of time, was not within my control.

21) I do not have any say or control as to how the administration of the Court functions.

22) It is also correct that, I served my Petition for En Banc hearing, as per my promise on the 09th of March, 2001; I lived up to my word.

23) I did not have any knowledge of the Courts decision, till March 14, 2001 and I should not be held accountable, nor be compelled to suffer consequences

of the decision, on March 09,2001.

24) Since, I have also claimed that, by the failure and refusal of the USDC in enforcing the laws of the Congress, by abiding by the decisions of the U. S. Supreme Court decisions and also the New York State Laws and Decisions of the New York State Court of appeals and other appellate as well as lower Courts, I have cited ad nauseam, in the USDC motion practice and in the appellate process; I am denied "equal protection" guaranteed by the Fifth Amendment of the U. S. Constitution, in this Judicial proceeding.

25) Besides that, the most recent decision, has denied my request to "enlarge time" to serve and file the Petition for En Banc hearing.

26) The Courts decision is not clear to me, is ambiguous as to whether the Court has rejected my right to serve and file a "Petition for En Banc hearing" or not.

27) My request, to enlarge time, was filed within five days, on Feb. 17, 200 I; upon my receiving the "decision of denial of Panel hearing" on Feb. 12, 2001. I believe that my request has been consistent with FRAP Rule 26(b).

28) Rights to a "Petition for En Banc hearing" is clear in F ARP Rule 35 and the "automatic consideration of request for En banc Hearing" is implicit in FRAP Rule 35(b)(3); in view of the fact, I did file my request for Panel Rehearing, that was denied, without any comments.

29) It is most interesting, that I must mention that, a paper, giving address of the Supreme Court Of The United States and telephone number of it's Clerk's

office, has been attached to the decision.

30) I am aware of the possibility of going to the U.S. Supreme Court.

31) It is therefore absolutely necessary for me to state that, while my right to come to this Court is a statutory and therefore a constitutional right, I do not have such right available to go the U. So Supreme Court.

32) Each and every members of this Court, is far more versed in the procedures and is fully aware of the Rules, Laws and the Constitution, than I am.

33) This Court is perfectly aware that, barely 1% of all the "petitions or writs" reaching the U S. Supreme Court are accepted for review and possible resolution.

34) The U. S. Supreme Court may not accept a case, merely because there has been "an error of law" in the lower Courts. While denying the petitions and writs, the U. S. Supreme Court does not "comment" about the merits" of the case underlying the petition to the U. S. Supreme Court.

35) This Court, more than the USDC has specific powers granted by 28 USCS 2106 and those powers are truly multidimensional.

36) In my petition, I have always said, that, in the event this Court cannot reach a decision it legally must reach or does not wish to reach, then this Court should "certify" to the U. S. Supreme Court, for resolution, as provided for under U. S. Supreme Court Rule 19.

37) May I respectfully urge this Court, not to "shun" my case and affirmatively resolve it as the U. S. Supreme

Court decisions and Laws of The U. S. Congress mandate.

38) I do not see, how cause of Justice is "served" by treating me in this fashion and what "rationale" exists, for such a treatment, to me.

39) I trust I am not overstepping any "boundaries" but it is my solemn duty to approach this Court, with this plea.

40) I trust, the decisions are not "retaliatory" in nature, on account of my aggressive language in my presentations heretofore; which may have offended sense of one or more Judges of this Court.

41) What I receive on a daily basis is far more graphic in nature and I cannot reproduce it on this record.

42) My legitimate grievances arise out of such continuing offensive conduct towards me and If I may say, against numerous others, that is our life. There is no recourse.

43) I am here to "redress my grievances" as provided for in Constitutional manner .

44) Under the above circumstances may I request this Court to grant following relief:

1) Kindly vacate the mandate, the Clerk's office issued on March 09,2001 ; or

2) In the alternate, modify the "mandate" and issue a stay order, for it's enforcement; pending final determination, in "unambiguous Court decision" as to my request for granting a Petition for En Banc Hearing.

3) To accept my Petition for En Banc hearing, for

consideration; that I have filed on March 09,2001; that was filed before I had any knowledge of this Court's decision I received on March 14,2001.

4) Grant my Petition for En Banc hearing and to resolve the matter, as the Constitution and the Laws of Congress as well as the decisions of the U. S. Supreme Court mandate.

5) In the event, this Court denies my request for En Banc hearing, this is my further request to this Entire Court, to outline each and every reason and basis for it's decision to "affirm the Decision and Judgement of the USDC", *beyond the language of "substantially for same reasons"* in it's Summary Order of November 07, 2000; that may offer me an opportunity to approach the United state Supreme Court, for proper resolution.

6) In the alternate, to certify questions to U. S. Supreme Court, pursuant to USSC Rule 19; for resolutions by U. S. Supreme Court, that will "truly" serve millions.

Wherefore, in view of the facts, as stated herein, may I respectfully request to grant me all the relief I have requested in this affidavit and to grant such other relief that is consistent with the principles of Equitable and Substantial Justice, consistent with the Laws of the Land, in effect in this Jurisdiction.

Spring Valley, NY Sd_____

March 16, 2001 Ashok Kashelkar

Sworn to before Sd_____

Rhonda L. Macpherson

Notary Public, State Of New York
No.01MA 6003077
Commission Expires 2/23/2002

My second affidavit, in MacCartney matter, dated March 23, 2001, referring to various issues. This was returned in it's entirety, without "filing or presenting to the Judges of the Court Of Appeals".

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ASHOK KASHELKAR Docket No. 00- 7090

Plaintiff - Appellant

- against -

Affidavit in support of Motion

HAROLD Y. MacCARTNEY, ET AL

Defendant \ Appellees

Motion to Reconsider, Vacate or Modify this Courts decision of March 09, 2001 and the Mandate of March 09, 2001; pending a final decision by this Court on Request for granting a "Petition for En Banc hearing" and to kindly accept my petition for En Banc hearing.

I, ASHOK KASHELKAR, Pro Se Plaintiff \Appellant; in the within matter; am fully familiar with the proceedings heretofore had; deposes and states as follows

1) This is another affidavit, in the "within cited" matter, prompted on account of my receiving this Court's Mandate from the Office Of the Clerk, for USDC,

SDNYat White Plains, NY mailed on March 20, 2001. Copy of the entire "package" received from USDC-SDNY is attached hereto as [continuing number for Exhibits] Exhibit No.6.

2) On March 14,2001; I received decision of this Court; entered on March 09,2001; that denied my Feb 17, 2001; motion to "enlarge time" to serve and file a petition for En Banc Hearing. On March 17, 2001; I have filed my motion, to Reconsider, vacate or to modify this Court's March 09,2001 decision and "stay" enforcement of the mandate.

3) May I respectfully refer to my March 16, 2001 affidavit; for pertinent details of my "serving & filing [by mailing]" the Feb. 17,2001 motion; it's receipt by this Court and the subsequent events, resulting in this Court's decision and mandate dated March 09, 2001; as reflected, in the Court's record and the U. S. Postal Service Record; attached as Exhibits to my Motion of March 17, 2001.

4) My last affidavit may not have clearly stated but the Court record reflects [as a matter of fact] that, I have completed, corrected, assembled, served and filed [mailed] a "similar" Petition for En Banc hearing, on March 09, 2001; in the second matter, under this Court's Docket number 00- 7751; entitled Ashok Kashelkar v Rubin & Rothman, et al.

5) Service and filing of my "Petition for En Banc Hearing" under 00- 7751, on March 09, 2001; was pursuant to my "similar" Motion to enlarge time, that I served and filed, on Feb. 17, 2001; for which I never received any response from this Court.

6) It was necessary for me to spend time to correct the original and all copies of the petition in the 00-7751 matter; on March 09, 2001; prior to serving and

mailing them to the counsel for the defendants\ appellees and this Court, in that matter. Copies of the Petition for 00- 7751 were also made at Kinko' s on March 08, 2001 ; as the receipt in Exhibit No. 3 reflects, attached to my March 16, 2001 affidavit.

7) The Mandate of this Court, dated March 09,2001, that I received from this "Court", on March 14, 2001; included only ONE ITEMIZED & VERIFIED BILL OF COSTS; "adjusted" to $ 404.94; [payable to MacCartney defendants] under the signature of Arthur M. Heller; Administrative Attorney. That has previously been attached, as my Exhibit No.5.

8) The USDC-SDNY "package" I have received, contains another "Bill Of Costs" of $ 294.98; payable to Garcia & Stallone; that is not "Adjusted" or "certified" by any official of the Court Of Appeals; as is reflected within Exhibit No.6, herein.

9) I did serve and did file my Feb. 17,2001 motion, in timely manner, with legitimate reason [that I need some time to work, to earn for living] while requesting time to enlarge, for filing my "Petition for En Banc hearing".

10) If there are any laws, rules or Constitutional Provisions[either of N. Y. State or that of the United States] as well as "any" decisions of the U. S. Supreme Court or the New York State Court Of Appeals; imposing a burden on any litigant; to forego the essential requirements of litigant's working to support his family, compelling the litigant to deprive him, of his "rights, property and liberty"; while pursuing judicial resolution, through the Constitutionally protected process of "vindicating and redressing" his Constitutional Rights, to preserve Liberty and Justice"; the same may kindly be cited, in a formal decision; under clear and authentic signatures

of Judges of this Court.

11) I have made this statement, on account of the "ambiguous" [at least to me] decision, of this Court, "beyond my understanding"; dated March 09, 2001, denying my simple request, for extension of time [for reasons cited in my affidavit of Feb. 17,2001]; and the subsequent "MacCartney" opposition, served through an affirmation dated March 20, 2001; calling my motion to be without any merit and asking for a penalty of$ 250.00, upon me, under FRAP Role 40.

12) Defendants MacCartney et al, have repeatedly requested, a penalty upon me, for my pursuing the "Constitutionally Guaranteed Judicial Process"; throughout their opposition, in these proceedings and "the record would reflect" and I must say, is "quite consistent with their peculiar methods and quality of law practice [for which the proof is on the record of this Court], that has reflected in all the Judicial proceedings, since 1995

13) May I suggest, that, the approach of the defendants\ appellees herein, is not any different than the approach and life style of all the "students" [responsible for] in the now famous numerous "shootings" in the schools, across the United States, over the last several years.

14) If the attorneys admitted to "practice laws", in the Courts have clearly demonstrated their own "practice and promotion " of "incredible misconduct" of every nature, forbidden by and in violations of the laws, in effect, [reflected on the record of this Court] over an extended period of time; no wonder the younger generations cannot see anything wrong in "their own actions", to shoot others, in the schools or elsewhere. This is a matter of fact and is not an argument. Apples always fall near the tree [that is also a fact].

15) As the "contents" of the Exhibit No.6. herein, compared with Exhibits 1,2 and 4; clearly show, that the March 14,2001 mandate, I received from this Court, did not contain the "Bill Of Costs" payable to Garcia & Stallone.

16) I do not know, how the "Administrative Offices" of this Court function; but I would respectfully suggest, that, in the least the "Bill Of Cost" for Garcia & Stallone has not been "reviewed, adjusted and certified", consistent with the Court's rules.

17) I have also said before and will repeat here, that, I should not be compelled to bear, nor suffer consequences; for the lapses in the administrative functions in the offices of this Court.

18) I am not certain, whether, I should have just sent a letter to this Court and bring the matter to the attention of this Court, for further relief.

19) I considered, it to be proper to "file this motion", for the relief, to avoid any "default" on my part.

20) A copy of this "motion" is being served upon the Office of the Clerk, USDC-SDNY; for their information and record.

21) Under the above circumstances may I request this Court to grant following relief:

1) Kindly vacate the "entire" mandate, the Clerk's office issued on March 09, 2001;

Or

2) In the alternate, modify the "mandate" and issue a stay order, of it's enforcement; pending final determination, in "unambiguous Court decision", as to my request for granting a Petition for En Banc Hearing.

3) To accept my Petition for En Banc hearing, for consideration; that I have filed on March

09,2001; that was filed before I had any knowledge of this Court's decision, I received on march 14,2001.

4) Grant my Petition for En Banc hearing and to resolve the matter, as the Constitution and the Laws of Congress as well as the decisions of the U. S. Supreme Court mandate.

5) In the event, this Court denies my request for En Banc hearing, this is my further request to this Entire Court, to outline each and every reason and basis for it's decision to "affirm the Decision and Judgement of the USDC", beyond the language of "substantially for same reasons " in it's Summary Order of November 07, 2000; that may offer me an opportunity to approach the United state Supreme Court, for proper resolution.

6) In the alternate, to certify questions to U. S. Supreme Court, pursuant to USSC Rule 19; for resolutions by u. S. Supreme Court, that will "truly" serve millions.

Wherefore, in view of the facts, as stated herein, may I respectfully request to grant me all the relief I have requested in this affidavit and to grant such other relief that is consistent with the principles of Equitable, Equal and Substantial Justice, consistent with the Laws of the Land, in effect in this Jurisdiction.

Spring Valley , NY
March 23, 2001

Sd_____
Ashok Kashelkar
Appellant ProSe

Sworn to before Sd_____

TERRY A HOLMES
Notary Public. State Of New York
No-4993275

Qualified in Bronx County
Commission Expires March 09, 2002

The following correspondence, initiated by the Second Circuit Clerk's office- throws light, on the the employees of U. S. Court Of Appeals "INTERFERING IN THE JUDICIAL PROCEEDING" in violation of Numerous Federal Statutes and violating my constitutional Rights.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Office of the Clerk
40 Foley Square
New York, New York 10007

Re: Kashelkar v. MacCartney Docket No.: 00- 7090

Date: April 6.2001

Dear Mr. Kashelkar:

This is to acknowledge receipt of your motion for Supplemental Motion Reconsider, vacate this Court's decision and to Modify or Stay enforcement of Mandate requesting relief in the case referenced above. Because this case was mandated on March 9, 2001, and your motion for an extension of time was also denied, this Court no longer has jurisdiction to act on this matter. For this reason, your papers are returned unfiled.

Please be advised that the continued submission of papers in closed cases may result in sanctions from the Court.

Sincerely

Roseann B. MacKechnie, Clerk
by: Sd_____
Beth J. Meador, Administrative Attorney
Enclosures
cc: Acco File

Ms. Meador <u>RETURNED my March 24, 2001 Motion</u>, of which my affidavit of March 23, 2001, was a part, with her above letter. [Copy of the Motion form, showing it's receipt in CA2NY, on March 27, 2001; is attached, after this page]

This motion was NOT FILED, by the Clerk's office and was never submitted to the Judges of the Second Circuit.

I wrote the following letter in Response- to the Clerk

Ashok Kashelkar
6 Innington Court
Spring Valley NY I 0977

By Certified Mail R. R, R.
70993400000416964682

April 17, 2001

Roseann B. MacKechnie Clerk
United State Court Of Appeals
Foley Square New York NY 10007

Re: Appeal Docket No. 00- 7090
Kashelkar \. MacCartney. et a1

Dear Ms. MacKechnie,

I received a letter, dated April 06,2001[mailed in New York on the April 10, 2001], from your office, on Saturday April 14, 2001, returning my March 24, 2001 "supplemental motion"; under the signature of Administrative Attorney Beth J. Meador and have noted the contents.

May I respectfully disagree with the thrust and substance of the letter, for following reasons and offer some observations and ask for clarification.

1) I received this Court's ..mandate" dated March 09, 2001. [mailed from your office on March 12, 2001] on March 14,2001, after coming home in the evening

2) On March 16, 2001, I prepared, served and mailed my Motion to Reconsider, Vacate or Modify and Stay the mandate. I have not heard anything about this "original" motion, so far.

3) Then, subsequently, I received the "Mandate" from the USDC- SDNY - WP , that included a "Bill Of Costs" of defendants, OMCDOC that is not "examined or certified" by anyone, in your office, as

FOR THE SECOND CIRCUIT

Each motion should be accompanied by a supporting affidavit with statement of issues. (Local Rule 27(a))
Include brief statement of facts with page references to the moving papers.

Ashok Kashelkar
Plaintiff / Appellant

-against-

Harold Y. MacCartney, et al

Use short title

00-7090
Docket Number

MOTION INFORMATION FORM

Motion for Supplemental Motion Reconsider, vacate this Court's decision and to Modify o: stay enforcement of Mandate

MOTION BY: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

Ashok Kashelkar Plaintiff / Appellant

OPPOSING COUNSEL: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

Please see attached

Has consent of opposing counsel:

A. been sought? ☐ Yes ☑ No
B. been obtained? ☐ Yes ☑ No

Has service been effected? ☑ Yes ☐ No

Is oral argument desired? ☐ Yes ☑ No
(Substantive motions only)

Requested return date: N. A.
(See Second Circuit Rule 27(b).)

Has argument date of appeal been set: N. A.

A. by scheduling order? ☐ Yes ☐ No
B. by firm date/argument notice? ☐ Yes ☐ No
C. If yes, enter date: N A

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

NOT APPLICABLE

Has request for relief been made below? ☐ Yes ☐ No
(See F.R.A.P. Rule 8.)

Any previous request for similar relief made to the 2nd Circuit? ☐ Yes ☐ No

Would expedited appeal eliminate need for this motion? ☐ Yes ☐ No

If no, explain why not:

Will the parties agree to maintain the status quo until the motion is heard? ☐ Yes ☐ No

Judge or agency whose order is being appealed: USDC-SDNY 99 CIV 5132, Decision and Judgement of Hon. McMahon J. and subsequent decisions of this Court

Brief statement of the relief requested: Reconsider or vacate this Court's summary decisio of March 09, 2001 and to Vacate, Modify or Stay "enfordement pf Mandate" dated March 09, 2001. Affidavit attached.

By: *(Signature of Attorney)*
Signed name must be printed beneath.
Ashok Kashelkar

Date: March 24, 2001

Appearing for: *(Name of Party)*
Pro Se

Appellant or Petitioner: ☑ Plaintiff ☐ Defendant

Appellee or Respondent: ☐ Plaintiff ☐ Defendant

ORDER

Kindly leave this space blank.

BEFORE:

IT IS HEREBY ORDERED that the motion be and it hereby is granted denied.

Date

For the Court:
CAROLYN CLARK CAMPBELL, CLERK

By:

BEST AVAILABLE COPY

the other "Bill of Costs for MacCartneys, has been".

4) That [uncertified "Bill of Costs.'] prompted me to serve the "supplemental motion" dated March 24, 2001 ; that you have returned to me with warning about penalty.

Now, I would like to observe the following:

A Provision is made under FRAP 26(b) for extension of time " for good cause".

B I offered the "good cause- that I need to work a little to support my family"- in my motion dated Feb. 17. 2001 [that was timely served and filed] and requested time of just two weeks. from Feb. 23, 2001 to March 09.2001, to file the "Petition for En Banc" hearing. [working to support is a "basic right", that I need not argue, with memorandum of laws]

C I received orders, *in Both The cases before this Court,* [00- 7090 and 00- 7751] denying my "Petitions for Panel Rehearing", dated Feb. 09,2001 ; which required my serving and filing the "Petitions For En Banc Hearing on Feb. 23.2001.

D I considered it "impossible" under the circumstances, fully described in my affidavit, dated Feb. 17, 2001.

E I mailed my Petitions For En Banc Hearing on March 09, 2001; in both the matters, that I completed [finished and printed]on March 08,2001 and March 09, 2001.

F I have also shown, that, even though I requested 'just two weeks time" to "perform the act" of serving and submitting the Petitions For En Banc Hearing, the decision on that request [denying extension of time] was made on March 09, 2001.

G The decision [para F] was placed in Mail on March 12, 2001, in New York City".

H That is precisely the date, my "Petitions For En Banc Hearing" were already "received in this Court".

I My request, in the Affidavit of February 17, 200 1; to the effect that **I need some more time to work** is quite proper .

J FRAP Rule 41(d)1 state that, a "party may move" to stay mandate ..... and request for "extension of time to file a Petitions For En Banc Hearing", is not excluded by FRAP 41... and in fact is also referred to [and therefore supported by] in FRAP Local Rule 27(c).

K Therefore, in my view of"simple reading of the rules", my filing the petition to "stay" the mandate [by a motion of March 16, 2001] is quite proper.

L My "original" Motion to "stay the Mandate" is dated March 16, 2001 and that is still in the Court and NOT YET DECIDED.

M My "Petitions For En Banc Hearing" in this MacCartney mater is also in the Court: that is served

and filed on March 09. 2001; that is received in the Court, before I served my "motion to stay mandate" on March 16, 2001.

N Since, I served and filed my Feb.17, 2001 motion [that also bears a '"FILED" stamp of Feb. 21,2001 for this Court], before the "time to serve and file the "Petitions For En Banc Hearing.' was expiring on Feb. 23,2001; it certainly was "served and filed" timely, for "extension of time".

There are two aspects, in every motion:

A (1) Serving on parties [my responsibility]

(2) and filing [that permits.. Placing the papers in the custody of US Postal Service]

B Consideration by the Court. [that is a Judicial Decision]

Let me analyse aspect " A(2)";

that concerns the functions of this office, subject to FRAP Rule 45; and

In view of the "FACTS as they exist" I would like to know the following:

1) What is the criteria, for the personnel in your office to 'present" the motion papers to the

"Judicial Authority" ?

2) Was that "criteria" properly met in the "presentation of my motions" dated Feb. 17, 2001, to the Court, for it's consideration, in timely manner ?

3) If my request, for extension of time [filed in the Court on Feb. 21,2001], from Feb. 23,2001 to March 09,2001 was "timely and properly" [permitted under FRAP 26] made, *may I know,* on which date, it was "presented" to the Court ? I understand that, there are criteria, as to preferences... but is there a criteria whether to present one to the Court or not ?

4) May I also know, as to why was it not considered by the Court till the March 09, 2001 ?

5) If the Court, for whatever reason, was unable to reach it's decision till March 09. 2001, can you explain to me in every detail how am I held responsible for that ?

6) Can you please explain to me, as to why should I be the one to "bear the burden. for the decision of March 09,2001 ?

7) Since the decision of the Court, was "mailed on March 12, 2001" that in itself is *"post facto "* compared to the Court's receiving my

"Petitions.. on March 12, 2001.

8) Is there anything, this [or any] litigant could have done to ensure that *the Court will hear* the "extension request" in timely manner ?

9) Given the fact, that, I served and mailed the "Extension of Time" motion on Feb.17, 2001; after actually receiving "it" [the Feb. 09, 2001 denial], in my hands on Feb. 12, 2001; is there any basis, to construe that, my serving and mailing the motion papers on Feb. 17, 2001, was in any way not acceptable ?

10) If there are any reasons [as far as the procedural aspects, of my serving, mailing on Feb. 17, 2001 and then the "filing" by this Office on Feb. 21, 2001"] was beyond the purview of the FRAP 26 or FRAP 41, may I request your office to "specifically point to those matters" ?

11) The "order denying my extension of time" to serve and file, the"Petitions For En Banc Hearing *"does not offer any reason* whatsoever, for the decision .

12) Is there any "hit or miss" type of movement of papers, in your office ?

Under the circumstances, with complete understanding that, the Court has all the authority to impose a penalty upon, me, for violating the rules; I am trying to understand, "what have

I done wrong, in this process, that calls for a penalty , upon me "?

It is axiomatic that, every element of every rule must also be complied with, by every person, that has any connection with the "motion papers", prior to arriving at a decision to impose any penalty upon me.

Otherwise, imposition of a penalty upon me [a "monetary" or "denial of a right for extension of time"] is not much different than King Henry the VIII's decision to behead, Sir Thomas Moore, in 1534 or so. Of course, Oliver Cromwell was responsible for H. H. Henry's decision.

Nor should it be, similar to a Police Officer stopping a car , on the road, at night, breaking a tail light "with his gun" and issuing a "summons to the driver for driving without proper lights."

I want to know, how the "denial of my right for extension of time" came about ?

We are back to "due process" problems, in the Judicial Proceedings, in this Court.

Since we are discussing the RULES, I would like to know, if I am the only one to "observe each one of them assiduously." while others cannot or need not ?

It is NOT enough that, I am engaging in arguments, with the defendants ?

It should not be necessary for me to "engage in arguments" with your office.

I need not offer a "cohesive memorandum of laws" with this letter.

I am trying to understand "exactly" as to the "actual problem", in the "system".

All I am asking is, for rectification of a mistake.

If that is wrong, please inform me, with every applicable reason.

Respectfully submitted,

Sd_____

Ashok Kashelkar

Plaintiff-Appellant \ Pro Se

I received the following response from Ms. Meador

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Office of the Clerk
40 Foley Square
New York, New York 10007

Re: Kashelkar v. MacCartney
Docket No.: 00-7090

Date: April 26, 2001

Dear Mr. Kashelkar:

This is to acknowledge receipt of your letter of April 17, 2001, which was referred to me for a response. First of all, petitions for rehearing en banc are due at the same time that the petition for rehearing is filed. (See Fedl. R. App. Proc. 40.) If one wishes to have a petition for rehearing followed by a petition for rehearing en banc, one must file a "Petition for Rehearing and a Petition for Rehearing En Banc".

Our record shows that the court rendered judgment in your appeal on November 7.2000. On November 20, 2000, you filed a motion to extend the time for filing your petition for rehearing..

On December 4, 2000, that motion was granted and you were given until December 15, 2000 to file your petition. You did not file your petition until December 18, 2000. Despite the fact that you were late filing the petition, it was submitted to the judges on the panel that heard your appeal. On February 9, 2001, the panel directed me to issue an order denying your petition for rehearing. This is a decision that is entirely within the Court's discretion. Whether or not a petition is filed on time or not, the Court may decide to deny it.

Furthermore, Since you had not requested a rehearing en banc. the 12/18/00 order became the final order of this Court, and the mandate was issued (in accordance with the Federal

Rules of Appellate Procedure) on March 9, 2001.

This case is now closed. Therefore, as I advised you in my previous letter, the Court no longer has jurisdiction in this matter. Any papers submitted in an attempt to continue this litigation will be returned to you.

Sincerely,

Sd_____
Beth J . Meador

cc: Acco File

I considered Ms. Meador's letter to be absolutely wrong and wrote the following letter to Ms. Meador.

Ashok Kashelkar
6 Innington Court
Spring Valley NY 10977

By Certified Mail R. R. R.
7099 3400 0004 1696 4590

May 05, 2001

Beth J. Meador- Administrative Attorney
Office Of The Clerk
United State Court Of Appeals
Foley Square
New York NY 10007

Re: Appeal Docket No. 00-7090
Kashelkar v MacCartney, et al

Dear Ms. Meador,

This is acknowledge your letter of April 26, 2001.

It would appear that, I may have "misunderstood" the FRAP rules, relating to the "Request For En Banc Hearing".

It is also accurate, that, in the "Petition for Rehearing"; that is dated De. 13, 2000; on page 2 and para marked 8) have stated, that:

> "In the event, this Court, for any reason does not wish to reach a decision, that should "legally" be reached; then this appellant respectfully requests this Court....
>
> 1) to certify the question, for resolution for "En Banc" hearing **or**
>
> 2) certify to the U. S. Supreme Court.

Even though my "request" may have been "somewhat unusual and unorthodox in it's form" it must be admitted, that,

> I DID REQUEST THIS COURT, to conduct EN BANC hearing.

May I know, whether, that request "counts" or not ?

Besides, I have requested, through a "Motion, dated March 16, 2001" to "reconsider, vacate, modify the decision and also to "stay enforcement", of the mandate. Such request conforms to FRAP.

I have not yet received any decision on the motion.

Can I receive a "written decision" ?

This motion should not be treated like U. S. Presidents have treated [dealt with and rejected] some legislation by their Pocket Veto [at least in the past] till there was an "outcry" from the Congressional Leaders and the News Media.

Assuming that, this Court, "does not wish to reach a decision, it must legally reach" it is most essential, that "proper record" is available for me, to consider the next step of a Petition to the U. S. Supreme Court. It would not sound a good idea, for me to claim [in my Supreme Court Petition], that, the 2nd Circuit treated me with a "Pocket Veto".

As you are aware, in the other case, Docket No. 00-7751 entitled Kashelkar v Rubin & Rothman, the matter will be considered by the Entire Court-whether "to hear it En Banc" or not.

You have more than enough knowledge and understanding, that, most of the issues, I have raised in my appeal, have already been decided by the Supreme Court [since 1803 in Marbury v Madison]and therefore, "enforcement" is the only question, left open.

Denial of the "enforcement" in the Judicial System [I have enough experience in the State system AND now in the "Federal System ?"] is probably the "most disastrous" experience, that will certainly "undermine" the democratic foundation. This plea is always ignored. But it certainly makes a difference.

The "Supreme Court" in **"Amistad"** [I have sent excerpts from the case in 00-7751] refused to declare the "free human beings" to be "slaves of Mr. Cruz and others". Now we have the 13th Amendment, prohibiting that.

Is it wrong for me to "seek justice, based upon the laws" ?

Ms. Meador, please bear with me. Please do not get upset for my raising such issues. But each one of them means a lot. I am just "another Pro Se" pursing litigation that may benefit others [it is in fact welcomed by the Supreme Court, see Rotella v Wood 528 US 549, 559.. Wherein the Court referring to the Clayton Act observed... "rewarding the swift who undertake litigation in the public good"

I await your response and remain,

Sincerely,

Sd_____
Ashok Kashelkar

And received the following response, indicating that the March 16, 2001, motion "was ALSO not FILED".. In FACT, it was filed on March 19, 2001 [as can be seen in Appendix B page 18]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Office of the Clerk
40 Foley Square

New York, New York 10007

Ashok Kashelkar
6 Innington Court
Spring Valley . NY 10977

Re: Kashelkar v. MacCartney Docket No.: 00- 7090

Date: May 7.2001

Dear Mr. Kashelkar:

This is to acknowledge receipt of your letter of May 5, 2001. Petitions for Rehearing En Banc must be filed in compliance with FRAP 35 and Local Rule 35. Your letter indicates that your Petition for Panel Rehearing did not contain a properly constructed request for Rehearing En Banc. A Petition for Rehearing En Banc that is "unusual or unorthodox in it's (sic) form" obviously does not comply with the rules.

The motion for reconsideration to which you refer was not filed because, at the time of its submission (March 16, 2001), your case was closed and this Court no longer had jurisdiction to act. A letter was sent to you on April 9, 2001, explaining that the Court lacked jurisdiction to consider your motion.

Finally, the United States Supreme Court rules require that Petitions for Writ of Certiorari be tiled within 90 days of judgment. Your case was decided on November 7, 2000. Therefore any Petition for Writ of Certiorari should have been filed no later than February 5, 2001.

This case is now closed. Therefore, as I advised you in my previous letter, the Court no longer has jurisdiction in this matter. I trust that this letter clarifies the status of your case.
Sincerely,

Sd_____
Beth J. Meador
cc: Acco File

This letter, from Ms. Meador, prompted me to write the following letter.

Ashok Kashelkar
6 Innington Court Spring Valley NY 10977

By Certified Mail R. R. R. No.7000 167000130395 0305

May 12, 2001

Ms. Beth J. Meador, Administrative Attorney
Office Of The Clerk U. S. Court Of Appeals-
For the Second Circuit 40 Foley Square
New York NY 10007

Dear Ms Meador ,

Re: Docket No. 00- 7090 Kashelkar v MacCartney, et al

This is to respectfully inform you that, I have serious disagreement with your interpretations, relating to the

applicable FRAP rules, as far as my filing "Petition for Rehearing" and a "Petition for En Banc" hearing, are concerned.

Let us examine the "progress" of this matter, since inception.

I filed the " Appeal" as my right, under FRAP Rule 3.

Upon a "Pro Se litigant's" filing such an appeal, is there any reason, that "it" will not receive "due consideration of the Court", that is "created under and charged to discharge it's duty", in accordance with, the Constitution, Laws and the Decisions of the United States Supreme Court ? My experience shows, that, IN FACT the Court has failed in it's duty, even though I have cited numerous "N. Y. State Statutes and Constitution and U. S. Statutes, N. Y. Court Of Appeals and U. S. Supreme Court Cases [as supporting authorities], in my Brief and Reply Brief

Not only that, but I cited similar State and US "authorities" in the District Court.

Notwithstanding my citing "all of such authorities" the Panel Decision of this Court "Rubber Stamped" the District Court decision.

Can anyone offer me "each and every reasons", as to why "ALL OF THE CITATIONS in MY BRIEFS WERE IGNORED"? What is the "basis for anyone to say, that the Panel decision has been issued with Sound Discretion?" *U. S. v Haggar Apparel Co.* 526 US 380, counsels against " a court charged to reach the correct decision" from reaching an "improper decision" at 390-391. *Haggar* court also observed,

that,..."Even if a language [of a rule and law] is thought to be unnecessary, [that is not a question in my case] however, we do not view it as a tacit instruction for the Courts to disregard substantive regulations" at 390.

Therefore the "Panel Decision" turned my " APPEALS" into "meaningless rituals" *Murray . v. Giarratano* 492 US 1. The "panel decision" does not reflect, that any "meaningful review was conducted", as required by MacNary v Haitian Refugee Center 498 US 479. Supreme Court requires the "decision" to articulate reasons, so the authority that reviews it [U. S. Supreme Court] will have understanding of the "decision lower Courts have reached", as it counsels in *Black v. Romano* 471 US 606.

I received this Court's "Panel Decision" of November 7th 2000 [that is a virtual "Rubber Stamp" except Rico statute of limitation comments], in the mail, on or about the 9th of November, 2000. [It takes 2 days, for the mail to arrive, from NYC].

The panel decision is nothing but a "total shock" and a "total and prejudicial mistreatment" to me as a Pro Se Litigant. However, that is also nothing different than "Customs and Practice" followed by the Court, that is Prohibited by the U. S. Supreme Court, as determined in *Adickes v. Kress & Co.* 398 US 144 [a famous case arising in this Court - that was reversed and remanded]

Along with the panel decision, I also received a "FORM"- RULE 40" information "Petition for Rehearing". Copy is enclosed, for your review.

It does not refer either to "Panel Rehearing" nor even

mentions the words "En Banc" anywhere, within it.

Upon it's receipt, I reviewed "the Form-with information on RULE 40" and I prepared my affidavit on Nov. 10, 2000, requesting "enlargement of time up to Dec. 15, 2000."

The Court granted the "requested extension" by it's decision on Dec. 04, 2000, for which, I am grateful, to the Court.

Upon my return from India, I commenced my work on the "Petition," and "did complete it" on Dec. 13, 2000, then had it " finished, copied, BOUND" and served it by US Mail on my opponents and sent it by US Mail to the Court on December 15th, 2000. Is not "mailing" on the last day, to the Court NOT permitted under the RULE ? If so, please cite the authority and also STATE THAT, IN EVERY CASE PERSONAL FILING HAS BEEN ENFORCED. I will demand verification of the record, from Clerk's office in hundreds of cases.

Now, let us look at the FRAP Rule 35.

Rule 35(c) says..." A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due.

Here are my observations:

1) Since the rule [35(c)] refers to **...initially** .. in this sentence, it also means that, *subsequent filing is not prohibited.*

2) The rule also refers and restricts the time to file....*by the date when the appellee's brief is due.*

> As you are aware, the Court never ordered the "appellees" to file any brief, in the "Rehearing Process".

Consequently, the "time for me to file the First En Banc Petition has STILL not run out".

Therefore, it cannot mean, that, I could have requested, "En Banc hearing" BEFORE the Panel heard my case. [Because, the appellees have filed their brief, only once and that too, in opposition to my Brief, in June, 2000, before the Panel heard the case, on Nov. 01, 2000]

The most important reason, that, I could not have "requested En Banc Hearing" in June is simply the requirement under FRAP 35(b)(1)(A).. That refers to:

> the "panel decision" being in "conflict with "a decision" of the United States Supreme Court" or of this Court. This rule "requires" that, the Panel decision is reached, before any En Banc hearing could be requested.

> It clearly means, that, even when the Panel Decision is in conflict with **A SINGLE DECISION OF THE U. S. Supreme Court,** one can request En Banc Hearing.

In all my briefs, I have cited U. S. Supreme Court cases by the DOZENS, supporting my arguments. **Has anyone seen (& READ) my briefs or not ?**

I could not make a claim [that Panel decision conflicts] in

June of 2000, since the Panel had not even heard or considered my case, by June 2000.

Nowhere, the FRAP either refer to or LIMIT the "panel decision"to mean, a Panel's FIRST decision or a decision, after Rehearing. It just says " Panel decision".

> Nor could I make such a claim under FRAP 35(b)(1)(B).....that requires.....a litigant to state that..... Panel decision conflicts with..... every other U. S. Court Of Appeals. For the same reason-that the Panel had not heard it, by June 2000.

In Short..... To file under the FRAP 35(b)(1)... I must have a panel decision, in my case, in my hand... that qualifies for such a claim [for the purpose of filing].

Under the circumstances, the statements in your letters [that I should have filed my request for En Banc hearing-earlier], are "inaccurate and in fact misleading". Not only that, but I would go a step further ahead and claim that, your "statement and suggestions are deceptive " and are directed towards me as a "Pro Se litigant"; to impose either your will or that of others [who may have directed you to do so] in violation of the Constitutional provisions.

I doubt, you would write such letters to one of the Larger 100 Law firms in New York City. They will have enough clout, to take some actions. Just because, I am a pro se litigant, if you have acted in such a manner then I must seek protection of the same laws and constitution as accepted by *Marbury v Madison,* 1 Cranch 137, 163 [1803] .

Being "a person with some authority" in the Governmental Administration in the U. S. Court Of Appeals, your such statement may cause most Pro Se litigants to "accept them", as *fait accompli.*

However, impositions, not supported by Laws or Rules-when expressed by Governmental Employees "strip the person of the authority" [when an act is performed contrary to the law, even though "so directed by others"] as determined by the U. S. Supreme Court in *Poindexter v Greenhow* 114 US 274.

Now let us look at FRAP Rule 35(b).... A party may petition for a hearing or rehearing en banc. That, therefore means Either En Banc Hearing **Or** En Banc Rehearing.

That means... En Banc.. Hearing is available.. TWICE, in ANY U. S. Court Of Appeals.

We have seen before. that. ANY such "request" for En Banc hearing cannot be made, till the "Panel has heard" a case and issued it's decision. Either it's First decision or the second decision-after "rehearing is requested".

Therefore, it has been proper for me to file a request for En Banc hearing, subsequent to my receiving the Panel Decision of Feb. 09,2001. Therefore your contentions, otherwise, are not tenable, under the RULES.

In fact, my motion of Feb. 17, 2001 contains my affidavit, that clearly "states my intention, to seek En Banc Hearing". I filed "identical" motion in both the cases, pending before the Court [00- 7090 and 00- 7751] . Both the motions have been filed on the same day.

While granting my Motion [as the stated purpose] under 00-7751 , the Court has referred to "Motion of March 09, 2001" in it's April 06, 2001 decision.

There is "NO PROHIBITION" in any FRAP to request extension of time, for Good Cause. Therefore, my "requesting extension of time" to file, "Petition for En Banc Hearing"; as I in fact have done by my motion of Feb.17,2001; that was consistent with and conforming to all the applicable FRAP Rules.

If you think otherwise, please OUTLINE each and every reason, with "AUTHORITY".

This will establish that, every litigant can have UP TO four hearings in ANY U. S. Court of Appeals.. As follows

1) Original Appeal.. Under FRAP Rule 3
2).Panel Rehearing under FRAP Rule 40
3) Initial En Banc Hearing.. Under FRAP Rule 35 and
4) En Banc Rehearing under FRAP Rule 35.

It does not mean, every litigant will even file for "rehearing before the panel".

I would suggest, that. "This mechanism is purposely established, to avoid" too many litigants, from running to the U. S. Supreme Court", where, SO MANY RUN as a result of the "dissatisfaction they receive in Court Of Appeals" and are Frustrated, when they receive rejection, under the Supreme Court Rules.

In fact, the clerk's office, "automatically send information

about U. S. Supreme Court address, etc." with the Summary Order [at least I have received it FOUR TIMES]

In fact, the above reasoning is consistent in view of the Panel Decision of April 06, 2001 in my second case [Docket No. 00- 7751], to the effect that, "Rehearing En Banc is denied". In view of the fact "initial En Banc Hearing" has not been held, any question of "Rehearing En Banc" can not arise.

The same panel "refused to Certify any question to the U. S. Supreme Court or ask for clarification". I do not have any doubts, that each member of the Court is fully familiar, with it's implication and the result - if such step is taken.

Since the Judges of the Court Of Appeals DO CERTAINLY UNDERSTAND THE RULES [as reflected above in 00-7751], **whose bright idea has it been** to come to the conclusion and inform me that my "case is closed" ?

What is the purpose for "notifying me, that the case is closed" ?

It, in effect, illegally "protects" the defendants. Mr. MacCartney has knowingly perpetrated perjury, in the Federal Judicial Proceeding [perfect support for " continuity " requirement in RICO claims], that I have argued and will argue for ever-no matter, what this Court has ruled and in fact "refused" to even comment on ths subject, as the District Court did.

When any person, actively "hides, shelters or protects" another person "charged or is chargeable with a crime", for the purpose of "evading process of justice" the protector is "subjecting himself' to "criminal charge and Penalty" under various statutes in either State or Federal systems. Such

charges may include from "aiding and abating" to "harboring a fugitive". In this case, violation of laws is that of "subornation of perjury".

Since, each person, employed in this Court has taken Oath, that includes, "protection of Constitution and faithful Execution of laws"; are the personnel in this Court not aware of such matters ? Is that not very serious and totally contrary to the laws, **PERSONS** in this Court are **OBLIGATED** to abide by and enforce ? That is forbidden by *Illinois v Gates* 462 US 213, fn14. and *Richardson v US* 526 US 813,818.

C. J. Rehnquist, writing for the Court in Bond v US 529 US 334, at 338 in n2, referring to California v Chiraolo 476 US 207,212 (1986) observed.... ....."[t]he issue is not his state of mind, but the objective effects of his action." In the same case, Justice Breyer, dissenting [Justice Scalia also dissenting] at 341 observed... *"[i]t is the effect, not the purpose, that matters".* [emphasis in original]

Bond, supra has been decided on April17 , 2000. That is well before this Court received my appellate brief. In all my briefs [either in District Court or this Court] I have always requested the Court to "take judicial NOTICE" of the U. S. Supreme Court decisions.

The decision of this Court, under the circumstances and facts on the record, also fails the "objectively reasonable test" of *Smith v Maryland* 442 US 735 [1979] at 740; that is also cited by Justice Breyer, *Bond*, supra at 340.

Do you have any explanation as to why the Court has ignored not just the law but the facts as well, on it's record, in my

BOTH THE case ?

Now- reverting to FRAP Rule 35(c).. and reading the 2nd sentence....

> .....A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing. [that refers to a 14 days period, from the prior [Panel] decision, that is being requested for reviewed En Banc.]

FRAP Rule 40 does not state, that, a litigant is "prevented" from requesting EXTENSION OF TIME, prior to filing a "Petition for En Banc Hearing."

Under the circumstances only known to this Court, the Court "issued" it's denial for PANEL REHEARING on Feb. 09, 2001, in my both the cases, which have been pending before this Court. [i.e. 00- 7090 and 00- 7751].

AGAIN: The "denials" does not state "ANY REASON", at all. Please see comments above in *Haggar*, Supra; *Giarratano*, Supra and *Black*, supra.

That is the reason, I have cited *Elkins v US* 364 US 206 and *Green v US* 356 US 165, so extensively, to question JUDICIAL INTEGRITY, in this Court, in the [00-7751] briefs which were prepared much later and my research surfaced these cases, well after the MacCartney briefs were prepared, served and filed.

Under the above circumstances, this Court's decisions are open to "serious "questions.

Questioning a "Court Decision" is a proper procedure under the Laws and Constitution of the United States. If it is not, may I request that "specific reasons and authority" be cited.

The effect, of the "Court Decision" "protects the defendants, from any liability."

That, in effect is also is "denial of my rights to legitimately claim damages" under the Laws and the U. S. Constitution. *Marbury*, supra, at 163.

It was not possible for me to "Prepare, serve and file" my Petition for En Banc Hearing in two weeks in each of the two cases, before this Court" by Feb. 23, 2001.

I clearly stated my reason, THAT IS A GOOD CAUSE, in my affidavits, dated Feb. 16, 2001, filed in both cases [i.e. 00-7090 and 00-7751], seeking extension of time for filing to March 09, 2001. My affidavit of Feb. 16,2001, with the motion *clearly demonstrates* my intention to seek En Banc Hearing.

I received the Feb. 09, 2001 decision on Feb. 12,2001. On Feb. 16,2001; I prepared my affidavit and on Feb.17, 2001; I served the papers on my opponents and also mailed it to the Court. That means, my "act of serving" the papers "occurred in five days". My request, for extension of time was not going to cause any "calamity", to the U. S. Court Of Appeals", <u>at ANY TIME</u>. My motion conforming to FRAP Rule 27 and FRAP Rule 26 request for "extension for time" to file "Petition for En Banc Hearing" was filed in timely manner. Is that not sufficient ? If not please cite the rule and authority.

My Motion asked, for time till March 09, 2001, for serving and filing the "petition for "En Banc Hearing."

Now I come back to the "process" in the Clerk's office.

The Motion papers, were filed on Feb. 21,2001. [as the "denial of extension request" dated March 09,2001, clearly show]

Here are the questions:

A Since, it was received and filed on Feb. 21,2001, can you please explain to me what transpired, since then to March 09,2001 ?

B Can you please let me know, as to the manner in which:

1) on which date, it was docketed [FRAP Rule 45(b)(1)] and

2) on which date. it was calendared [FRAP Rule 45(b)(2)]

If the Rules under [FRAP Rule 45] do not apply to your office, as far as the "Motions" are concerned, then kindly let me know, "which rule applies, to motions", for ALL the motions, the Court considers.

C Since, I had asked for extension of time "up to and including March 09, 2001" can you please inform me the "exact date", motion appeared

on the Court's Calendar ? Did it appear, more than ones ? On which dates ?

D If it was not decided till March 09, 2001; can you please inform me, as to how long it was, in your office, without being placed on the "Court Calendar"?

E If it did appear on the calendar, before March 09, 2001, what was the exact date, that it "did" appear on the Court's Motion Calendar ?

F Can you please inform me, as to WHY THE DECISION [purportedly reached on the 9th of March 2001], WAS MAILED OUT ON MONDAY, the 12th of MARCH, 2001 ?

While I was preparing my "Petition for En Banc Hearing", I carefully read the FRAP Rule 35(b)(3) and realised, that, in view of the "specific" Page limitations "as far as the length of the "Petition" when a party files a "Petition for Panel Rehearing and En Banc Hearing", they are considered single document. Therefore, my "expression of intentions" in my motion of Feb. 17, 2001; are sufficient, as have been considered to be "so" under 00-7751.

To my plain reading, I had already reached "page limits", while filing the Petition for Rehearing.

Therefore, all that was needed was a Statement, that, the "Panel decision conflicts with "a decision of the United States Supreme Court".

The record shows, that, in the briefs [First Brief, Reply Brief and Rehearing Brief] I have cited numerous U. S. Cases-in support of my case. I have also commented, that, the District Court and this Court's holding is contrary to the U. S. Supreme Court decisions.

Does that not mean that this Court has been placed on NOTICE, that, it's decision [and since it "rubber stamped" District Court decision on Nov. 07, 2000] has been in conflict with several Supreme Court decision ?

Can you please IDENTIFY the Person[s] responsible to write the Nov. 07, 2000 panel decision ?"

Under the circumstances, in my Petition for En Banc hearing [served prior to the Denial of Extension of time, dated March 09, 2001] I offered over 160 US Supreme Court Cases, in "digest format" and did not offer extensive "arguments".

I offered a few comments as to how, two previously decided cases [2nd Circuit] [which formed the basis of the U. S. District Court's decision] were "erroneously decided".

Frankly, I question the **"entire process of appeals"** I have been subjected to, in this Court. It has been "*totally meaningless ritual*". "*Subjected*" to has been extensively discussed in *Davis v Monroe County Board Of Education* 526 US 629 at 644 and 645. That is also frowned upon by the Supreme Court, in it's decision in *Civil Rights Cases* 109 US 3 [1883] at 20-21 and the Supreme Court calls it to be a **violation of the 13th Amendment of the U. S. Constitution.**

So far the cost to me is in several thousands of Hours of work and at least over $ 1,500.00 in preparing the Appendix and Briefs, in this appellate process. I have expended thousands of dollars and spent thousands of hours in prior proceedings. This will constitute "deprivation of my property", without equal protection under due process, guaranteed by the Fifth Amendment; recognised by *Boiling v Sharpe* 347 US 497 and denial of equal justice, under *Hirabayashi* v US 320 US 81.

I am calling " the appeals process, *I have been subjected* to in the 2nd Circuit" to be "extremely prejudicial to me, full of disregard of the U. S. Constitution and the Laws of the U. S. Congress and hundreds of decisions of the U. S. Supreme Court. The Supreme Court in *Texas & Pacific R. Co. v Rigsby* 241 US 33, at 39-40 [1916] in unanimous decision admonished that, **"disregard of law is wrongful act"**.

In addition to which, you "write letters informing me, that, for any more filing, the Court may impose monetary sanctions upon me. This not only a "purposeless restraint" per *Baker v McCollan* 443 US 137 [1973], at 146 [Blackmun J. concurring]. It also cited *Poe v Ullman* 367 US 497 [1961] at 543 comments of dissenting Harlan J. relating to "liberty".

I call this act [of threats of imposition of monetary penalty as Governmental Administration by "intimidation and threats".

Such conduct or act [that is performed by individuals and not by the Brick or mortar of the Court Building] is prohibited by the Constitution and numerous Federal Statutes. Justice Black described such matters as "being punished for pursuing a constitutionally protected conduct"- *North Carolina v*

Pearce. 395 US 711. It is also proper to describe the "act of closing the file, without any legal authority, equal to [p]ervasive and objectively offensive behavior by an official denying constitutionally guaranteed benefit, cf *Davis ,supra at* 653.

In fact "[i]t is the official decision, not to remedy the violation [of a wrongly reached Panel Decision]" and to top it all for me to receive, such threats in your letter.....*Davis* supra, at 642, that is most disturbing.

That is the reason, I have offered the example of a "Police officer, stopping a car at night, proceeding to break a light and then issue a summons, for not having a proper light", in my first letter to the Clerk's office. It is also akin to "employing a Fox to guard a chicken coup".

Can you please categorically explain to me, why is it wrong for me to File

1) Appeals

2) Motions under the FRAP Rules ?

3) Petition..... for relief as provided for in the FRAP Rules ?

4) And for relief under the authority in 28 USCS 2106 ?

I am requesting you to be specific, in your response.

Finally: 1) Who took the decision that my MacCartney case [Docket No. 00- 7090] **was** [or to be] **closed** ? Please identify, each and every person, responsible, for the decision. Please identify the person[s] by name(s) .

2) Is it an "administrative" decision or a "Judicial" decision.

3) Who "interprets" the FRAP in this Court ?

4) Has the Court "reached interpretations of FRAP" in any manner, other than, as promulgated and published ?

5) How did the "decision maker" convey this decision to you or to anyone else in the Clerk's office, to close the file ? Has it been "verbal" or is that "written" ?

6) Did anyone even make an attempt to "challenge or question the decision", that every person performing a "law enforcement function" must question, at any time, before you wrote the letter to me, that is dated April 06, 2001 ?"

Based upon the contents of this entire letter and my previous letters to you, I am requesting you to "categorically explain every matter, wherein I have requested a response."

By this time, my claiming that, I have been discriminated is

not at all wrong. It would not surprised me, if several other litigants have been treated and that such *"customs and practice"* has prevailed, in this U. S. Court, that is frowned upon by *Addickes*, supra.

This is proof positive of "deliberate indifference and discrimination" in the U. S. Court.

Your letter is the "factual evidence" of conduct that is totally prohibited by the Constitution and the decision of the Supreme Court of the United States.

The Courts have duty to see, that waters of Justice are not polluted-as the Supreme Court observed in *Mesarosh v U. S.* 352 US 1, 14 [1956]. Ignoring the Congressionally mandated procedures cause the Courts to become accomplices in the disobedience of the law- *McNabb v US* 318 US 332. That is how it looks, with the decisions, I have had, so far.

Whether you agree or not, that is the fact. The facts are spoken by the written words of the Court decisions, now "etched in black ink on the paper" and your letters, to me.

The Courts decisions can be changed and rectified, provided there is will to do so. Authority is provided in **28 USCS 2106**, to rectify . This statute, authorizes me to file a "motion to Reconsider, Modify or vacate" Panel Decision and that is exactly, what I have done. My act is constitutional and protected by the Constitution and I should not be nor can be subjected to any penalty, see *North Carolina v Pearce*, supra, without violating my constitutional rights.

FRAP Rule 41 (d) 1 permits filing a motion to stay a mandate.

I have filed such a motion, by serving and mailing on March 16, 2001 and now, you have indicated that, the "motion is not filed".

Can you please inform me as to who took that decision "NOT TO FILE" the March 16, 2001 motion ? I would like to know each and every aspect of applicable FRAP or any other rule that your office may have relied upon to reach such a decision.

That is the sole reason, I have suggested that, I am looking for "rectification" and do not expect "retribution." Retribution is not justice. I trust "sound minds" will, prevail.

I have used civil language, to express myself and no one should be offended.

Let the Court set the record on proper path and then and only then, justice will prevail.

Sincerely,

Sd_____

Ashok Kashelkar

A Pro Se Litigant

PS: If the Court determines that, it will first decide the 00-7751 and pending that decision will hold the 00- 7090

in "abeyance", that I can understand.

As a result of my May 12, 2001 letter, herein, I received DENIAL of Request for En Banc Hearing dated May 16, 2001 [please see Appendix B..pages 52 & 53; in Rubin & Rothman matter. Then I received denial of my March 16 Motion "re" my Petition for En Banc hearing and the "denial" is dated May 31, 2001, in the MacCartney matter [Appendix B pages 18, 19 20.

This decision bears a "FILED" stamp, dated March 19, 2001 and shows, that Ms. Meador falsely informed me that, "the March motion was NOT FILED."

I would also suggest, that in fact, my May 16, 2001 Motion was "not EVEN submitted to the Court" prior to my writing the letters, to Ms. Meador.

Prepared and submitted by

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